HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1151 of 2005

Between:

The Superintending Engineer,
Irrigation Circle Department,
Hyderabad and others

... Appellants

And

B. Sathaiah and another

... Respondents

Counsel for the appellants: Government Pleader for Irrigation & Command Area Development

Counsel for respondent No.1: Shri V. Narasimha Goud

::JUDGMENT::

June 29, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 29.09.2004 passed by the learned Single Judge in Writ Petition No.12413 of 2000,

whereby he declined to interfere with award dated 26.02.2000 passed by the Presiding Officer of Labour Court-III, Hyderabad (hereinafter described as 'the Labour Court') for re-appointment of respondent No.1 as Mazdoor or equivalent post with service benefits from the date of filing of application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') i.e. 13.7.1995.

Respondent No.1 was engaged as daily wage Mazdoor in the Irrigation Department, Moosi Canal Sub-Division, Suryapet on 19.11.1963. His service was terminated with effect from 1.6.1967 after giving him one month's notice and retrenchment compensation. On 25.5.1976, he was offered re-appointment as Mazdoor, but he did not avail the same. Subsequently, on a request made by him, Divisional Executive Engineer, Nalgonda, vide his order No.C.A10/6476-60, dated 3.8.1976 appointed respondent No.1 as Telephone Operator in the work-charge establishment. However, when respondent No.1 reported for duty, Assistant Engineer, IB Canal Sub-Division refused to accept the same on the premise that he was working as a civil contractor with the department. Respondent No.1 represented for re-consideration of his case. He was given favourable assurance, but nothing tangible happened. He then filed an application under Section 2-A (2) of the Act for his reinstatement as Telephone Operator by asserting that he was wrongfully denied from joining the place of posting and that despite assurance given for reconsideration of his case, the concerned officer did not appoint him. He also pleaded that persons junior to him had been offered re-appointment without considering his case and, in this manner, he had been discriminated.

In the counter filed on behalf of the opposite parties (the

appellants herein), it was averred that joining report of the workman (respondent No.1 herein) was not accepted in 1976 because at the relevant time, he was working as contractor with the department and, thereafter, he could not be appointed in view of the ban imposed by the State Government vide G.O.Ms. No.130, dated 18.03.1981 on fresh appointment/engagement.

On the pleadings of the parties, the Labour Court formulated the following points:

1) Whether the petitioner is entitled for reappointment as Telephone Operator or any suitable post?
2) Whether the rejection of the 3rd respondent is liable to be set aside?
3) To what relief the petitioner is entitled?

The learned Presiding Officer of the Labour Court decided point No.1 in favour of respondent No.1 and declared that he is entitled to re-appointment as Mazdoor or equivalent post. The operative part of award dated 26.02.2000 passed by the learned Presiding Officer reads as under:

> "In the result, the petition is partly allowed. The petitioner is entitled for re-appointment as Mazdoor or equivalent post in the irrigation dept. However, the petitioner is not entitled back-wages and other consequential benefits. But his service should be calculated from the date of filing of this ID i.e. 13.7.95. This award is passed accordingly. This award will come into force U/s.17-A of the I.D.Act, 1947 in 30 days from the date of its publication."

The appellants questioned the award of the Labour Court in Writ Petition No.12413 of 2005, but could not persuade the learned Single Judge to quash the same. The learned Single Judge held that non-acceptance of the joining report of respondent No.1 was illegal and improper. The learned Single Judge rejected the plea of laches raised on behalf of the appellants by observing that no such plea was

raised before the Labour Court. The learned Single Judge also referred to O.A.No.5603 of 1992 filed by respondent No.1 before the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') and observed that the Labour Court did not commit any error by entertaining the dispute raised by respondent No.1.

Learned Government Pleader for Irrigation argued that the Labour Court committed an illegality by entertaining the dispute raised by respondent No.1 after a time gap of 19 years and the learned Single Judge erred by refusing to set aside the award on the ground of delay. She further argued that the concerned Assistant Engineer did not commit any illegality by refusing to accept the joining report of respondent No.1 because at the relevant time, he was working as civil contractor with the department.

Shri V. Narsimha Goud defended the award by arguing that the direction given by the Labour Court for re-appointment of respondent No.1 as Mazdoor does not suffer from any jurisdictional infirmity or error of law apparent on the face of the record. Learned counsel relied on the judgments of the Supreme Court in **Ajaib Singh v. Sirhind Coop. Mkg.-cum-Processing Service Society Ltd.**[1], **Gurmail Singh v. Principal, Govt. College of Education**[2], **Shahaji v. Executive Engineer, PWD**[3] and argued that delay in raising the dispute cannot, by itself, be a ground for refusing relief to the workman. Learned counsel further argued that the Division Bench cannot interfere with the discretion exercised by the Labour Court to entertain and adjudicate the dispute raised by respondent No.1 moreso because the learned Single Judge did not consider it proper to exercise this Court's power under Article 226 of the Constitution of India to nullify the award. Shri Narasimha Goud

emphasized that the reasons assigned by the Assistant Engineer for refusing to accept the joining report of respondent No.1 was totally irrelevant and extraneous and the Labour Court did not commit any error by directing his appointment as Mazdoor with notional service benefit with effect from the date of filing the application under Section 2-A (2).

We have considered the respective submissions and carefully scanned the record.

The question whether the Labour Court can refuse to adjudicate the reference made under the Act only on the ground of delay was considered by a three Judges Bench of the Supreme Court in **Western India Match Co. v. Workers Union**[4]. The facts of that case were that respondent No.1 union had taken up the cause of respondent No.3, whose services were terminated by the employer. Initially, the State Government declined to make reference for adjudication under the U.P. Industrial Disputes Act, 1947 and writ petition filed by the workman was dismissed by the High Court, but on a re-consideration, the State Government made a reference on 28.8.1963. The Labour Court rejected the reference by observing that there is no industrial dispute. The writ petition filed by respondent Nos.1 to 3 was allowed by the High Court and refusal of the Labour Court to adjudicate the dispute was declared illegal. The Supreme Court confirmed the orders of the Single and Division Benches of the High Court and held:

> "From the words used in Section 4(*k*) of the Act there can be no doubt that the Legislature has left the question of making or refusing to make a reference for adjudication to the discretion of the Government. But the discretion is neither unfettered nor arbitrary for the section clearly provides that there must exist an industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decides to refer it for

adjudication. No reference thus can be made unless at the time when the Government decides to make it an industrial dispute between the employer and his employees either exists or is apprehended. Therefore, the expression “at any time”, though seemingly without any limits, is governed by the context in which it appears. Ordinarily, the question of making a reference would arise after conciliation proceedings have been gone through and the conciliation officer has made a failure report. But the Government need not wait until such a procedure has been completed. In an urgent case, it can “at any time” i.e. even when such proceedings have not begun or are still pending, decide to refer the dispute for adjudication. The expression “at any time” thus takes in such cases as where the Government decides to make a reference without waiting for conciliation proceedings to begin or to be completed. As already stated, the expression “at any time” in the context in which it is used postulates that a reference can only be made if an industrial dispute exists or is apprehended. No reference is contemplated by t he section when the dispute is not an industrial dispute, or even if it is so, it no longer exists or is not apprehended, for instance, where it is already adjudicated or in respect of which there is an agreement or a settlement between the parties or where the industry in question is no longer in existence.”

In **Ajaib Singh v. Sirhind Coop. Mkg.-cum-Processing Service Society Ltd.** (supra), the Supreme Court considered the question whether the award passed by the Labour Court could be annulled only on the ground of delay of seven years in raising the dispute. Their Lordships of the Supreme Court traced the history of legislation with respect to industrial disputes, referred to the judgments of the Supreme Court in **Bombay Gas Co. Ltd. v. Gopal Bhiva**[5], **Town Municipal Council, Athani v. Presiding Officer, Labour Court**[6], **Jai Bhagwan v. Ambala Central Coop. Bank Ltd.**[7], **Sakuru v. Tanaji**[8], **H.M.T. Ltd. v. Labour Court**[9] and held:

“It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the

proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in ***Ram Chander Morya*** **v.** ***State of*** **Haryana {(1999) 1 SCT 141 (P & H) = ILR (1999) 1 P & H 93 (FB)}** is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that

> "reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay".

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act.

The Supreme Court then considered the facts of that particular case and reversed the judgment of the High Court, which had quashed the award of the Labour Court on the ground of delay. Paragraphs 11 and 12 of that judgment, which have bearing on this appeal, are extracted below:

> "In the instant case, the respondent management is not shown to have taken any plea regarding delay as is evident from the issues framed by the Labour Court. The only plea raised in defence was that the Labour Court had no jurisdiction to adjudicate the reference and the termination of the services of the workman was justified. Had this plea been raised, the workman would have been in a position to show the circumstances preventing him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. The learned Judges of the High Court, therefore, were not justified in holding that the workman had not given any explanation as to why the demand notice had been issued after a long period. The findings of facts returned by the High Court in writ proceedings, even without pleadings were, therefore, unjustified. The High Court was also not justified in holding that the courts were bound to render an even-handed just ice by keeping balance between the two different parties. Such an approach totally ignores the aims and object and the social object sought to be achieved by the Act. Even after noticing that "it is true that a fight between the workman and the management is not a just fight between equals", the Court was not justified to make them equals while returning the findings, which if allowed to prevail, would result in frustration of the purpose of the enactment. The workman appears to be justified in complaining that in the absence of any plea on behalf of the management and any evidence, regarding delay, he could not be deprived of the benefits under the Act merely on the technicalities of law. The High Court appears to have substituted its opinion for the opinion of the Labour Court which was not permissible in proceedings under Articles 226/227 of the Constitution."

In **Gurmail Singh v. Principal, Govt. College of Education** (supra), the Supreme Court reversed the order of the High Court, which had approved the refusal of the Labour Court to adjudicate the

reference on the ground of delay and observed:

> "We find that the Labour Court having held in case of the appellant whose services were terminated on 30-9-1981, that Section 25-F of the Industrial Act was violated, was in error in dismissing the reference on the ground of delay as the termination was of 1981 and the dispute was raised in 1989. Similarly, the High Court in the impugned judgment committed the same error in confirming the said decision. The reason is obvious. As laid down by this Court in the case of ***Ajaib Singh* v. *Sirhind Coop. Marketing-cum-Processing Service Society Ltd.*** **{ 1999 (2) L.L.N. 674 = (2000) 9 SCC 496}** if the order of dismissal is challenged belatedly, the dispute would still continue for adjudication, the only question would be to deprive back wages for the period of delay in raising such a dispute if on merits it is to succeed."

In **Nedungadi Bank Ltd. v. K.P. Madhavankutty**[10], the Supreme Court considered the issue of delay in making of reference and held:

> "Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent

for raising an industrial dispute was ex facie bad and incompetent."

In **Sapan Kumar Pandit v. U.P. State Electricity Board**[11], the Supreme Court reversed the judgment of Allahabad High Court and held that delay in making the reference under Section 4-K of the U.P. Industrial Disputes Act, 1947 did not warrant quashing of the same. Paragraphs 8 and 15, which contain the ratio of the judgment, are extracted below:

> "The above section is almost in tune with Section 10 of the Industrial Disputes Act, 1947, and the difference between these two provisions does not relate to the points at issue in this case. Though no time-limit is fixed for making the reference for a dispute for adjudication, could any State Government revive a dispute which had submerged in stupor by long lapse of time and rekindle by making a reference of it to adjudication? The words "at any time" as used in the section are prima facie indicator to a period without boundary. But such an interpretation making the power unending would be pedantic. There is inherent evidence in this sub-section itself to indicate that the time has some circumscription. The words "where the Government is of opinion that any industrial dispute exists or is apprehended" have to be read in conjunction with the words "at any time". They are, in a way, complementary to each other. The Government's power to refer an industrial dispute for adjudication has thus one limitation of time and that is, it can be done only so long as the dispute exists. In other words, the period envisaged by the enduring expression "at any time" terminates with the eclipse of the industrial dispute. It, therefore, means that if the dispute existed on the day when the reference was made by the Government, it is idle to ascertain the number of years which elapsed since the commencement of the dispute to determine whether the delay would have extinguished the power of the Government to make the reference.
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> There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time. But when the dispute remained alive though not galvanised by the workmen or the union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. In this case, when

the Government has chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding its reliefs. That is a different matter altogether. The High Court has obviously gone wrong in axing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination."

In **S.M. Nilajkar v. Telecom District Manager**[12], the Supreme Court considered the issue of delay and observed:

"It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in ***Shalimar Works Ltd.* v. *Workmen*** **{AIR 1959 SC 1217}** that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in ***Shalimar Works Ltd.* v. *Workmen*** (supra). In ***Nedungadi Bank Ltd.* v. *K.P. Madhavankutty*** **{ (2000) 2 SCC 455 }** a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In ***Ratan Chandra Sammanta* v. *Union of India*** **{ 1993 Supp.(4) SCC 67 }** it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants to any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated some time in 1985-86 or 1986-87. Pursuant to the

judgment in ***Daily Rated Casual Labour*** **v.** ***Union of India*** **{ (1988) 1 SCC 122 }** the Department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the Scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

In **Shahaji v. Executive Engineer, PWD** (supra), the Supreme Court reiterated the law laid down in **Ajaib Singh**'s case (supra), distinguished the judgment in **Nedungadi Bank Ltd. v. K.P. Madhavankutty** (supra) and set aside the award passed by Labour Court, Aurangabad, which refused to adjudicate the dispute referred by the government only on the ground of delay by making the following observations:

"Having gone through the judgments we have no doubt that the judgment of this Court in ***Ajaib Singh case*** { **(1999) 6 SCC 82 }** lays down the law correctly. In the instant case there was no ground of delay urged by the management. Moreover, even if there was delay in making the reference to the Labour Court, if it came to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted or curtailed. In ***Nedungadi Bank case*** **{ (2000) 2 SCC 455}** what was challenged before the High Court was the order making the reference. That was not a case where the Labour Court refused to entertain the dispute on the ground of delay. Having regard to the clear position in law we are left with no option but to allow this appeal and set aside the judgment and order of the High Court."

In **Asst. Engineer, CAD v. Dhan Kunwar**[13], the Supreme Court reiterated the proposition laid down in **Nadungadi Bank Ltd. v. K. P. Madhavankutty** (supra) and held that reference made after seven years of the closure of the section in which he was employed

as a work-charge employee ought to have been rejected by the Labour Court on the ground of delay.

The propositions, which can be culled out from the above noted judgments are:

1) The Industrial Disputes Act, 1947 does not prescribe any limitation for raising the dispute.

2) While considering the question whether the dispute raised by the aggrieved workman or the union should be referred for adjudication, the appropriate government can take into account the abnormal delay, if any, in raising the dispute and refuse to make reference by assigning cogent reasons.

3) If the appropriate government, notwithstanding the long delay on the part of the workman or union in raising the dispute, makes a reference, the High Court will be extremely slow to interfere with the same unless it is convinced that the cause of the opposite party (employer) has been gravely prejudiced on account of delay.

4) If the adjudicatory forum constituted under the Industrial Disputes Act or similar other statutes makes an award ignoring the delay on the part of the workman or the union in raising the dispute, the Constitutional Court can, in exercise of its power of judicial review, mould the relief. In a given case, the Court may quash the award if it is established that implementation of the award after long lapse of time may affect the rights of the parties.

In the light of the above, we shall now consider whether the award passed by the Labour Court is vitiated by an error of law apparent on the face of the record and whether the learned Single Judge rightly declined to set aside the same.

A reading of the award shows that the learned Presiding Officer of the Labour Court adverted to the issue of delay, but refused to deny relief to the workman. The learned Presiding Officer analysed the evidence produced by respondent No.1 that he had been promised by the concerned authority for re-consideration of his case after finalization of the contract work and that the representations made by him did receive consideration by the concerned authorities, and then held:

> "… The petitioner questioned the delay in raising the industrial dispute as he made several representations before the respondents for his reinstatement into the service. There is no limitation to raise the industrial dispute for appropriate relief before the Labour Court in the light of the decision reported in AIR 1999 SC 1351."

In our opinion, the finding recorded by the learned Presiding Officer of the Labour Court on the issue of delay is not vitiated by an error of law apparent on the face of the record and mere possibility of our forming a different opinion cannot justify interference by this Court under Article 226 of the Constitution of India – **Syed Yakoob v. K.S. Radhakrishnan**[14], **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab**[15], **Surya Dev Rai v. Ram Chander Rai**[16].

Notwithstanding the above conclusion, we are convinced that the award passed by the learned Presiding Officer is liable to be set aside with a direction for fresh consideration of the matter because he did not find any illegality or impropriety in the rejection of his joining report by the Assistant Engineer and also because the crucial issue relating to maintainability of the application under Section 2-A (2) was not considered and decided by the Labour Court.

While dealing with point No.2, the learned Presiding Officer

observed as under:

> "**Point No.2:**
>
> The petitioner has attributed against the 3rd respondent that the rejected his joining report on the petty ground that he was doing govt. civil contract works. He was also informed that his case will be considered only after finalization of the contract works. After completion of the contract works, the petitioner claimed that he approached the respondents for re-appointment as mazdoor or telephone operator but his case was not considered. At this juncture, the A.G.P. for the respondents submitted that the respondents have no power to appoint the workman in the department since the powers were withdrawn by govt. under G.O.Ms.No.130, dt.18.3.81 and as much as the petitioner was not re-appointed into service. The petitioner challenged the rejection orders of the 3rd respondent on the ground that the petitioner was still doing Govt. civil contract works and his joining report was not accepted at that time. It was an admitted fact that the petitioner was doing civil contract works at the point of time and the rejection of joining report of the petitioner is not illegal but his prime duty was that the matter was informed to the higherups. Any how the petitioner was refused to take him into service at that time, since he was doing contract works and not eligible for the govt. job under APPWD and Govt. Conduct Rules. The rejection of joining by the 3rd respondent was not improper under above rules, and the plea of the petitioner that the rejected orders of the 3rd respondent is unjustified is not accepted as the same is not sustainable under law."

In our opinion, once the learned Presiding Officer found that refusal of the officer concerned to accept the joining report of the workman was legally correct, there was no warrant for issue of a direction to the appellants to re-appoint him as Mazdoor without considering whether the plea of discrimination raised by respondent No.1 has been established beyond doubt. It is, therefore, apposite to remit the matter to the Labour Court for fresh adjudication of the dispute raised by respondent No.1.

A perusal of the record shows that the complaint made by

respondent No.1 before the Labour Court was that he had not been re-appointed despite promise made by the competent authority vide Ex.W.1. The points formulated by the learned Presiding Officer of the Labour Court also indicate that the claim of respondent No.1 was only for re-appointment and not for nullifying the termination of his service with effect from 1.6.1967, which, as mentioned above, was preceded by notice and payment of retrenchment compensation. It is, thus, evident that the grievance of respondent No.1 related to violation of Section 25-H and not Section 25-F or 25-G of the Act.

For deciding whether such an application can be maintained under Section 2-A, it will be appropriate to notice the language of that section. The same reads as under:

> "**2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute:-**Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute.
>
> (2) Notwithstanding anything in Section 10, any such workman as is specified in sub-section (1) may, make an application in the prescribed manner direct to the Labour Court for adjudication of the dispute referred to therein; and on receipt of such application, the Labour Court shall have jurisdiction to adjudicate upon any matter in the dispute, as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act; and accordingly all the provisions of the Act, shall apply in relation to such dispute as they apply in relation to any other industrial dispute."

The term "industrial dispute", as defined in Section 2 (k) of the Act, means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. There was a good deal of conflict of judicial opinion on the interpretation of the above definition. While some

courts took the view that a dispute between an employer and a single workman cannot be treated as an industrial dispute, other courts held that it could be treated as an industrial dispute. The third view was that an individual dispute cannot per se be an industrial dispute, but it can become such dispute if the cause of the individual workman is taken up by a trade union or a substantial number of workmen employed in the industry. The last view was approved by the Supreme Court in **Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan**[17]. In **Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate**[18], the Supreme Court held that the liberal construction of the expression "any person" used in the definition of "industrial dispute" was impermissible. In **Workmen v. Dharam Pal Prem Chand**[19], the Supreme Court ruled that notwithstanding the width of the words used in Section 2(k), a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union, by a substantial number of workmen. The same view was reiterated in **Workmen of Indian Express Newspaper Pvt. Ltd. v. Management of Indian Express Newspaper Pvt. Ltd.**[20].

The above interpretation of the definition of the term "industrial dispute" created serious difficulty for individual workman, who could not persuade the trade union or his co-employees to espouse his cause. A large number of representations were made to the government to amend the Act so as to enable the individual workman to avail remedy against arbitrary action of the employer without the necessity of espousal of his cause by the trade union or his fellow employees. This led to the enactment of Section 2-A of the Act, whereby an individual dispute connected with discharge, dismissal,

retrenchment or termination is deemed to be an industrial dispute notwithstanding that no trade union or co-workman espouses such dispute.

The Legislature of the State of Andhra Pradesh went a step further. By Andhra Pradesh Act No.32 of 1987, sub-section (2) was inserted in Section 2-A so as to facilitate raising of dispute by individual workman without undergoing the process of conciliation proceedings and reference by the State Government. Sub-section (2) of Section 2-A, which begins with a non-obstante clause, lays down that any workman, as specified in sub-section (1), may make an application in the prescribed manner directly to Labour Court for adjudication of the dispute referred to therein and on receipt of such application, the Labour Court acquires jurisdiction to adjudicate on any matter in the dispute as if it was a dispute referred to or pending before it, in accordance with the provisions of the Act. The expression "any such workman" appearing in sub-section (2) of Section 2-A makes it clear that an application in relation to the dispute can be filed under sub-section (2) only if the dispute relates to discharge, dismissal, retrenchment or termination of his service. This necessarily excludes all other disputes from the purview of Section 2-A. In other words, a workman employed in an industry within the State of Andhra Pradesh, who is aggrieved by the action of the employer in relation to his conditions of service other than dismissal, discharge, retrenchment or termination of service, cannot make an application under Section 2-A (2). Such workman has to necessarily resort to the procedure prescribed under the Act for reference of the dispute.

Since the aforementioned issue, which goes to the root of the matter, was not decided by the Labour Court, we feel that ends of

justice would be met by remanding the matter for fresh adjudication of the dispute raised by respondent No.1.

In the light of the above discussion, the appeal is allowed. The order of the learned Single Judge and award dated 26.2.2000 passed by the Labour Court are set aside with a direction to the latter to decide the dispute afresh. The parties are directed to appear before the Presiding Officer, Labour Court-III, Hyderabad on 13.8.2007.

While disposing of the appeal in the manner indicated above, we deem it necessary to make it clear that the observations made in this judgment shall not influence fresh adjudication of the dispute raised by respondent No.1 and the learned Presiding Officer, Labour Court shall independently consider all the issues, which may be raised by the parties except the one relating to delay in filing the application by respondent No.1.

As a sequel to disposal of the appeal, WAMP Nos.1030 and 1031 of 20007 filed by respondent No.1 for interim reliefs are dismissed.

G.S. SINGHVI, CJ

June 29, 2007

C.V. NAGARJUNA REDDY, J

Note:
L.R. copy be marked
(By order)
svs

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[1] AIR 1999 SC 1351

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[7] (1983) 4 SCC 611

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